

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

*Plaintiff,*

v.

**Civ. No. 16-173**

A PERUVIAN PAINTING ENTITLED ADAM AND EVE IN  
GARDEN OF EDEN A/K/A “LA CREACIÓN DE EVA,”

*Defendant-in-rem.*

**VERIFIED COMPLAINT FOR FORFEITURE *IN REM***

Plaintiff, United States of America, brings this complaint in accordance with Supplemental Rule G(2) of the Supplemental Rules for Certain Admiralty or Maritime Claims and Asset Forfeiture Actions, and alleges as follows:

**NATURE OF THE ACTION**

1. This is a civil action to forfeit and condemn to the use and benefit of the United States of America property involved in violations of the Importing or Exporting Goods Contrary to Law or Regulation that is subject to forfeiture pursuant to 19 U.S.C. § 1595a.

**DEFENDANT *IN REM***

2. The defendant *in rem* consists of the following:
  - a. A Peruvian Painting Entitled Adam And Eve In Garden Of Eden A/K/A “La Creación De Eva.” (hereafter referred to as “Defendant Property”).
3. The Defendant Property was seized by the Federal Bureau of Investigation on November 5, 2012, in Santa Fe, Mexico, and is presently held Albuquerque, in the District of New Mexico.

4. The Defendant Property is now, and during the pendency of this action will be, in the jurisdiction of this Court.

#### **JURISDICTION AND VENUE**

5. The United States District Court for the District of New Mexico has subject matter jurisdiction under 28 U.S.C. §§ 1345, 1355(a) and 1356.

6. Venue for this civil forfeiture action is proper in this district pursuant to 28 U.S.C. §§ 1355 and 1395, as acts or omissions giving rise to the forfeiture took place in this district and the property is found in this district. Upon the filing of this complaint, the Defendant Currency will be arrested by execution of a Warrant for Arrest *In Rem* in the District of New Mexico.

#### **FACTS**

7. On October 5, 2012, the Federal Bureau of Investigation (FBI) Art Crime Program coordinator received official diplomatic notification from the Embassy of Peru in Washington, D.C., that the Peruvian Ministry of Culture had reason to believe that a painting stolen from a church in Peru was being offered for sale by the Peyton Wright Gallery in Santa Fe, New Mexico. The embassy formally requested FBI assistance in recovering the stolen painting.

8. The Peruvian Ministry of Culture report specified that a painting entitled “La Creación de Eva” (The Creation of Eve) was stolen from the Chapel of the Virgen del Rosario in Hualahoyo, Huancayo, Junin, Peru in 1991. Created in the 17th century, the stolen painting depicts a biblical scene set in the Garden of Eden in which God is drawing Eve from Adam’s torso. The report indicated that the dimensions of the painting were 126.7 cm x 167.6 cm (approximately 49.88” x 65.98”).

9. The Peruvian Ministry of Culture became aware of an email sent by the Peyton Wright Galley advertising several recent acquisitions for sale. One of the works advertised in the email was described as follows: “Cuzco, Peru / Adam and Eve in the Garden of Eden / Oil on Canvas / Ca. 1700 / 50” x 66” / 58” x 74” (OD).” The image appeared to the personnel of the Ministry of Culture to be identical to the “La Creación de Eva” painting stolen in Peru in 1991.

10. On October 9, 2012, an FBI agent, acting in an undercover capacity, visited the Peyton Wright galley. The agent observed the stolen painting hanging on the wall on the second floor of the gallery in the “Spanish Colonial” section of the Gallery. On November 5, 2012, the FBI executed a federal search warrant at the Peyton Wright Gallery and, among other things, seized the stolen painting. The stolen painting is currently in FBI evidence, located at 4200 Luecking Park Avenue, Albuquerque, New Mexico, 87107.

11. During the course of the search warrant, one of the gallery workers advised that the painting was consigned to the gallery for sale by Antonio Roig-Ferre. Roig-Ferre stated that he originally purchased the painting from Peyton Wright in 2001 or 2002 for approximately \$45,000. Roig-Ferre decided to sell the painting, in March 2012, entered into a consignment agreement with Petyon Wright, which led to the painting being on sale in the Peyton-Wright Gallery when seized by law enforcement in November 2012.

#### **FIRST CLAIM FOR RELIEF**

12. The United States incorporates by reference the allegations in paragraphs 1 through 11 as though fully set forth.

13. Title 19, United States Code, Section 1595a(c)(1) subjects to forfeiture merchandise which is introduced or attempted to be introduced into the United States contrary to

law. The statute provides that the merchandise shall be seized and forfeited if it is stolen, smuggled, or clandestinely imported or introduced.

14. Defendant Property must be forfeited to the United States pursuant to 19 U.S.C. § 1595a(c)(1)(A), because the property was stolen, smuggled, or clandestinely imported or introduced into the United States.

**REQUEST FOR RELIEF**

WHEREFORE, Plaintiff requests:

(1) That, pursuant to Rule G(3)(b)(i) of the Supplemental Rules for Certain Admiralty or Maritime Claims and Asset Forfeiture Actions (“Supplemental Rules”), a Warrant of Arrest *In Rem*, in the form submitted with this Complaint, be issued to the United States Attorney General or to any duly authorized law enforcement officer by the Clerk of this Court, as the defendant personal property is already in the possession, custody or control of the United States;

(2) That the Court direct any and all persons having any claim to the defendant properties to file and serve their Verified Claims and Answers as required by 18 U.S.C. § 983(a)(4) and Supplemental Rule G, or suffer default thereof;

(3) That the defendant properties be forfeited and condemned to the use and benefit of the United States of America; and

(4) That plaintiff be awarded its costs and disbursements in this action and such other and further relief as this Court deems proper and just.

Respectfully submitted,

DAMON P. MARTINEZ  
United States Attorney

A handwritten signature in black ink, appearing to read 'S. Long', is written over the printed name of Shana B. Long.

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**28 U.S.C. § 1746 DECLARATION**

I am a Special Agent with the Federal Bureau of Investigation who has read the contents of the Complaint for Forfeiture *In Rem* to which this Declaration is attached; and the statements contained in the complaint are true to the best of my knowledge and belief.

I declare under penalty of perjury and the laws of the United States of America that this Declaration is true and correct, except as to matters stated on information and belief, and as to those matters I believe them to be true.

Dated: 5-9-2016

Kathleen Magnafici  
Kathleen Magnafici, Special Agent  
Federal Bureau of Investigation